

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

December 11, 2009

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on December 11, 2009. Members present were Chairman Peter Brown, Barry Stumbo, Kathryn Moore, Jan Meyer, James Griggs and Carolyn Edwards (arrived at 1:05 p.m.). Member Louis Stout was absent. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members present were Jim Marx, Bill Sallee and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes to be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, Chairman Brown asked all those present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2009-76: JITANDER DUDEE** - appeals for a variance to reduce the required width of a landscape buffer for a vehicular use area from 5 feet to 1.5 feet, in a Professional Office (P-1) zone, on property located at 600 Perimeter Drive. (Council District 7)

The Staff Recommended: Disapproval, for the following reasons:

1. Granting the requested variance would result in vehicular movements coming to within 1.5' of an existing sidewalk at this location, which is considered a public health hazard that should be avoided. This public safety concern is intensified by the narrow width of the back-up and turnaround area that is proposed for the westerly half of the new parking area.
2. There are no features unique to the subject property to justify a reduction in the required landscape buffer width. Circumstances related to the possible shortage of off-street parking at this location are not considered unique, and would have broad applicability to many other properties in Lexington-Fayette County.
3. Strict application of the Zoning Ordinance would result in a full 5' wide landscape buffer being provided adjacent to the proposed parking area. Such a buffer is appropriate at this location due to the presence of a sidewalk that extends along the cul-de-sac of Perimeter Drive. Complying with the buffer width requirement will still allow a net increase in the number of parking spaces provided on site.

Mr. Marx stated that a letter of withdrawal was received from the applicant; and that no action by the Board regarding this request was necessary.

- b. **V-2009-86: ANDERSON HOMES FOR RENT** - appeals for a variance to reduce the required setback for a free standing sign from 20 feet to 10 feet, in a Planned Neighborhood Residential (R-3) zone, on property located at 1976 Edgeworth Drive. (Council District 6)

The staff received a letter from the applicant requesting withdrawal of this case on December 2. It appears on this agenda only because it had already been advertised in the Lexington Herald-Leader.

Mr. Marx acknowledged having received a letter from the applicant stating that they wished for a withdrawal of the subject appeal. Mr. Marx said that no action by the Board regarding this request was necessary.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2009-87: TROY LEE TURNER** - appeals for a variance to reduce the required side street side yard (along Southport Drive) from 30 feet to 21 feet in order to enclose an existing porch, in a Single-Family Residential (R-1C) zone, on property located at 306 Rosemont Garden. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed construction is only to enclose an existing porch that is already covered by the roof of the main dwelling. Once enclosed, that portion of the dwelling will have a setback that is comparable to or greater than the setbacks provided by existing dwellings at the other corners of this intersection.
2. The alignment of the existing dwelling, originally constructed in 1939, along Southport Drive is a special circumstance that contributes to justifying the type of variance that has been requested, with no structures to be placed closer to Southport Drive than what already exists.
3. Strict application of the Zoning Ordinance would result in the appellant not being able to enclose the existing porch. Such an outcome, which can be considered a hardship, could easily be regarded as an unnecessary restriction that deprives the appellant of a reasonable property improvement that is consistent with others in this neighborhood.
4. The circumstances surrounding the requested variance are not the result of any actions taken by the appellant, but have resulted from the manner in which this older subdivision was developed many years ago.

This recommendation of approval is made subject to the following conditions:

1. The porch may be enclosed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The variance is granted only for the purpose of allowing the existing porch to be enclosed.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Troy Turner, appellant, was present. Mr. Turner indicated that he agreed with and would abide by the conditions for approval.

Referring to a letter that was received from a neighboring resident, Mr. Stumbo related the concern that was expressed about another part of the applicant's house that had been "boxed in". Mr. Turner said that was the porch, which he stopped working on after learning that a permit was needed. For clarification, Mr. Stumbo asked if the white addition shown in the submitted photo was what is being enclosed. Mr. Turner replied no, adding that it was the side porch along Southport Drive. He explained that the addition in question was constructed before he purchased the property; and that he wanted to enclose the porch on the opposite side of the house in order to have a mudroom. Mr. Stumbo then asked about the kind of material that would be used. Mr. Turner responded that it would be white vinyl siding, to match the existing addition on the other side.

Ms. Moore said one of the neighbors had raised a concern about the way the enclosed porch would look, based on the other side. She asked counsel if the Board had any control over what this looks like. Ms. Boland responded no, adding that that really was not one of the criteria for a variance.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Stout absent) to approve **V-2009-87: TROY LEE TURNER** (a variance to reduce the required side street side yard [along Southport Drive] from 30 feet to 21 feet in order to enclose an existing porch, in a Single-Family Residential [R-1C] zone on property located at 306 Rosemont Garden) for the reasons listed by the staff, subject to the three conditions listed by staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- b. **C-2009-81: CARLA JACKSON-STOVAL** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Townhouse Residential (R-1T) zone, on property located at 1109 Kalone Way. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

1. Providing family child care for up to 12 children at this location during normal "office/business hours" should not adversely affect the subject or the surrounding properties. Off-street parking and the outdoor play area to be provided will exceed the minimum requirements of the Zoning Ordinance. Extended hours of care, from 6:00 PM to 9:00 PM, will only be provided for up to six children.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care for up to 12 children may be provided in accordance with the submitted application and site plan on Monday through Saturday from 6:00 AM to 6:00 PM.
2. All necessary permits, including an occupancy permit and fence permit, shall be obtained from the Division of Building Inspection prior to constructing the required fence for the play area and prior to opening the facility.
3. During the extended hours of between 6:00 PM and 9:00 PM on Monday through Saturday, care may be provided for only up to six children at this location.
4. The back yard play area shall be fenced in accordance with the requirements of the Division of Building Inspection.
5. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Carla Jackson-Stovall, appellant, was present and agreed to abide by the conditions for approval.

Chairman Brown asked staff whether the 6:00 a.m. starting time for the child care facility was typical. Mr. Marx replied that it was a little earlier than the typical starting time, but certainly reasonable.

The letters that were received regarding this appeal were reviewed by the Board at this time. Mr. Stumbo said it was mentioned in one neighbor's letter that the applicant would be keeping children from 6:00 a.m. until 11:00 p.m. Ms. Jackson-Stovall clarified that only six children would be at the facility until 9:00 p.m.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo, and carried unanimously (Stout absent) to approve **C-2009-81: CARLA JACKSON-STOVAL** (a conditional use permit to provide family child care for up to 12 children in a Townhouse Residential [R-1T] zone on property located at 1109 Kalone Way) for the reasons listed by the staff, subject to the 5 conditions listed by staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- c. **C-2009-82: SAM DICK** - appeals for a conditional use permit to establish an indoor recreational facility (tri-athlete training), in a Wholesale and Warehouse Business (B-4) zone, on property located at 320 North Ashland Avenue. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

1. A small indoor training facility at this location should not adversely affect the subject or surrounding properties. Proposed activities do not generate excessive levels of noise. Minimal traffic will be generated and adequate off-street parking will be provided. The building to be occupied is bordered on three sides by other commercial uses, and no aspect of the proposed use is anticipated to be disturbing for the few residential properties that border the back side of the building.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facility shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any interior remodeling, and a Certificate of Occupancy shall be required prior to the opening of the facility.
3. A minimum of eight off-street parking spaces at 309/333 North Ashland shall be leased by the appellant, or otherwise reserved for the proposed use through some other type of binding agreement that is acceptable to the Division of Building Inspection and the Department of Law.

Chairman Brown asked whether or not there were objectors to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Sam Dick, appellant, was present and indicated that he would abide by the conditions for approval.

Mr. Stumbo asked when Mr. Dick hoped to begin operating the indoor training facility, in the event of the Board's approval. Mr. Dick said they have a lease that starts January 1<sup>st</sup> and they hope to open February 1<sup>st</sup>. Mr. Stumbo then asked about the pool that will be used for training purposes. Mr. Dick responded that it is an 18' by 6' above-ground, self-contained, fiberglass unit.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards and carried unanimously (Stout absent) to approve **C-2009-82: SAM DICK** (a conditional use permit to establish an indoor recreational facility [tri-athlete training] in a Wholesale and Warehouse Business [B-4] zone on property located at 320 North Ashland Avenue) for the reasons listed by the staff, subject to the three conditions listed by staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- d. **C-2009-83: SHEILA KALAS** - appeals for a conditional use permit to establish an indoor recreational facility (personal training studio), in a Wholesale and Warehouse Business (B-4) zone, on property located at 324 North Ashland Avenue. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

1. A small fitness studio on this property should not adversely affect the subject or surrounding properties. Conditioning activities at this location will not generate excessive levels of noise. Minimal traffic will be generated and adequate off-street parking will be provided. The building to be occupied is bordered on three sides by other commercial uses, and no aspect of the proposed use is anticipated to be disturbing for the few residential properties that border the back side of the building.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facility shall be operated in accordance with the submitted application and site plan.
2. A Certificate of Occupancy shall be obtained from the Division of Building Inspection

within 30 days following action by the Board.

3. A minimum of six off-street parking spaces shall be provided on site for this use.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Sheila Kalas, appellant, was present. She indicated that she had reviewed the conditions and agreed to abide by them.

Chairman Brown asked how long the appellant has been open at this location. Ms. Kalas responded a little over 5 years. He then asked why a permit was not obtained initially. Ms. Kalas said she was unaware that a permit was needed, since this was an existing business that moved from a different location.

Action – A motion was made by Mr. Griggs, and seconded by Ms. Edwards to approve **C-2009-83: SHEILA KALAS** (a conditional use permit to establish an indoor recreational facility [personal training studio] in a Wholesale and Warehouse Business [B-4] zone on property located at 324 North Ashland Avenue) for the reasons listed by the staff, subject to the three conditions listed by staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

The votes were as follows:

Ayes: Moore, Meyer, Stumbo, Edwards, Griggs

Nay: Brown

Absent: Stout

The motion for approval carried, 5 to 1.

- e. **C-2009-80: IMMANUEL BAPTIST EARLY CHILDHOOD EDUCATION CENTER** - appeals for a conditional use permit to expand the pre-school capacity from 75 to 171 students, in a Single-Family Residential (R-1B) zone, on property located at 3100 Tates Creek Road. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

1. An increase in the capacity of the preschool at this location should not adversely affect the subject or surrounding properties. All necessary interior space is already available, and an abundance of off-street parking is conveniently located near the entrance to the facility. An existing outdoor play area is large enough to accommodate the number of children proposed.
2. Additional traffic generated by the enrollment increase at the preschool is expected to be manageable, given the traffic management improvements that were implemented by the church several years ago when the kindergarten and middle schools were greatly expanded.
3. All necessary public facilities and services, such as police and fire protection, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The preschool expansion, for children between the ages of three and five, shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to expanding the preschool, which shall include an occupancy permit and any permits needed for upgrading the fencing and screening of the outdoor play area.
3. The preschool shall have a maximum enrollment of no more than 171 children, with hours limited to Monday through Friday from 7:00 AM until 6:00 PM.
4. Operation of the preschool shall at all times comply with regulations of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Kelly Hale, Director of the Early Childhood Education Center, was present. She said she had reviewed the four conditions for approval and would abide by them. Ms. Hale indicated that an agreement was reached with the objector who was present, which she explained to the Board. She related the objector's concern regarding the Lexington Christian Academy, which operates a school on the church property, and the related traffic on Old Mt. Tabor Road between the hours of 8:00 and 8:40 a.m., as well as between 3:00 and 3:40 p.m. She noted that the children attending the pre-school on the church campus came in at a different time, from 9:00 a.m. to 12:00 noon. She acknowledged that the requested increase in the student pre-school capacity to 171 would be adding more cars; however, she explained that the reason for the requested number of students was because they were told by State licensing (KY Cabinet for Health and Family Services) that there was ample space for the expansion. Ms. Hale told the Board that they would be very satisfied with limiting the number of children to 108; and that the majority of parents whose children attend the pre-school would be asked to use Bates Creek Road to access the church property rather than Mt. Tabor.

Chairman Brown asked the person who formerly objected to come forward. Ms. Shirley DeBoor was present representing Heatherwood Townhomes. She felt that what Ms. Hale was proposing, with respect to reducing the pre-school capacity to 108 and primarily using the Bates Creek Road access to the property, was satisfactory and would help the traffic situation there. She said Old Mt. Tabor is a very short road that has become an expressway of through traffic, despite the posted speed limit of 25 mph. Ms. DeBoor spoke about the school-related traffic, which she described as "really bad in the morning" in both directions. She said they were very concerned about adding more students and cars until Ms. Hale explained that the children attending the pre-school would be arriving at 9:00 a.m. and leaving at noon, so the peak traffic times for both uses will not overlap entirely.

Chairman Brown asked staff, in view of the agreement between the parties (for which he expressed his appreciation), if it would be necessary to amend any other condition besides #3 that pertains to maximum enrollment. He noted that the Board could only recommend that parents access the property from Bates Creek, because this couldn't actually be enforced. Mr. Saltee concurred, saying that parents could be encouraged to do this, but enforcement by Building Inspection would be difficult. Ms. DeBoor made further comment about the traffic congestion due to the lack of a turn lane off Bates Creek into the church property. Chairman Brown then asked whether there is a traffic signal at Mt. Tabor, to which Ms. DeBoor responded affirmatively.

In response to the Chairman's request for comment, Traffic Engineer Jim Gallimore said it seemed to be a good idea to ask parents to use the Bates Creek entrance more so than Old Mt. Tabor; but typically, people wanted to use the route that is most convenient for them – unless some kind of incentive was offered. He said he didn't think just asking the parents to change their route would be that effective. Mr. Gallimore went on to say that it was a little hard to tell if the traffic patterns will be amplified when the school expands, because the increase in enrollment would not be coming from a particular section of town. However, he expected increased congestion on Old Mt. Tabor proportional to the amount of increase in enrollment.

Ms. Hale told the Board that she provides maps for the parents at the beginning of the year indicating which entrance to use; and if a different entrance is used, they could not get in the car line. So, the parents would need to use the Bates Creek entrance, although a few of them would use Mt. Tabor. Ms. Hale was hopeful that the majority of parents who are provided a map, indicating the use of the Bates Creek entrance, will do so.

Ms. DeBoor said they just wanted to make sure that the student limit of 108 will be enforced. Chairman Brown assured her that it would be, indicating the change in Condition #3. He explained that the pre-school would not be able to exceed 108 students without having to come back to the Board with that request, for which notice would be provided.

In response to Mr. Griggs' inquiry, Ms. Hale said the pre-school is open daily from 7:00 a.m. until

6:00 p.m. She explained that there are probably 10 to 12 students who come in from 7:00 to 9:00 a.m.; the bulk of the students attend the pre-school from 9:00 a.m. to 12:00 noon, although a few will stay until 2:00 p.m.; and about 20 stay no later than 6:00 p.m. She noted that the car lines are there at 9:00 and 12:00 o'clock.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stout absent) to approve **C-2009-80: IMMANUEL BAPTIST EARLY CHILDHOOD EDUCATION CENTER** (a conditional use permit to expand the pre-school capacity from 75 to 108 students in a Single-Family Residential [R-1B] zone on property located at 3100 Tates Creek Road) as recommended by the staff; and subject to the four conditions listed by staff, including the amendment of Condition #3, as follows: The pre-school shall have a maximum enrollment of no more than 108 children, with hours limited to Monday through Friday from 7:00 AM until 6:00 PM.

(Following disposition of the aforementioned case, the Board proceeded to hear A-2009-85: LARRY MORTON.)

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining.

D. **Conditional Use Appeals**

- 1. **C-2009-84: LEXINGTON CATHOLIC HIGH SCHOOL** - appeals for a conditional use permit to expand the athletic complex facilities, in a Single-Family Residential (R-1C) zone, on property located at 2250 Clays Mill Road. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. An athletic complex accommodating several sports is an established use at this location. The proposed additions are reasonable improvements, located entirely within the boundaries of the existing complex, which will have safety benefits and will enhance the overall quality of the facilities. Specific areas with water drainage problems have already been identified, and those will be addressed as part of a new storm water management plan to be implemented as part of the project.
- b. New facilities with at least some potential for disturbing adjoining or nearby residential properties have been or will be designed to minimize disturbances. Specifically, the batting cage will have openings only on the field side of the cage, away from the adjoining residences in that area. Lighting for the baseball field will be installed and operated in accordance with the recommendations of a company that specializes in lighting for athletic fields.

- c. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The athletic complex additions and renovations shall be completed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to initiating construction and renovation activities.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, with due attention being given to any existing drainage problems. This plan shall be subject to acceptance by the Division of Engineering.
4. Lighting for the baseball field shall be installed and operated in accordance with the recommendations of a company that specializes in lighting for athletic fields, with the goal of minimizing the potential for lighting to disturb residential properties that border the subject property.

Representation – Ms. Rena Wiseman, attorney, was present representing the appellant. She told the Board about having met with Ms. Delma McAtee, the property owner at 2333 Southgate Drive. She said that they had discussed her concerns about storm water drainage and the backstop behind home plate in connection with the proposal to expand/renovate the facilities at Lexington Catholic High School's athletic complex. She explained that part of the storm water management plan they are implementing is an improvement that will pick up any water that is getting into the property owner's back yard. Ms. Wiseman also spoke about the proposed increase in the height of the backstop behind home plate, from 30 feet to 50 feet, to address the problem with foul balls landing in Ms. McAtee's rear yard. With that explanation, she indicated being in agreement with the staff's recommendation, as well as the conditions for approval. Several letters of support were submitted for the record.

Chairman Brown asked staff whether any of the related conditions would need to be reviewed, based on what Ms. Wiseman stated. Mr. Marx responded that he thought Condition #3 as worded (regarding storm water management) was satisfactory; and, for the record, it should be clarified that the height of the backstop will be raised from 30 to 50 feet, if the conditional use appeal is approved. Chairman Brown then asked the objector to come forward. Ms. McAtee responded that what Ms. Wiseman proposed was satisfactory, and her objection was withdrawn.

At this point, the staff provided additional language to Condition #1, which was shown on the overhead and read by Mr. Sallee, as follows: "The athletic complex additions and renovations shall be completed in accordance with the submitted application and site plan, including an increase in the height of the backstop from 30 feet to 50 feet." Ms. Wiseman indicated that she was in agreement with the amended condition.

The Chairman queried whether the Board wished to have a review of this matter. Mr. Griggs related his concern about the persistent water drainage problems, noting a lengthy discussion on this issue in 2000. Therefore, he felt that a review was needed in 6 months or a year.

In response, Ms. Wiseman acknowledged that there are problems with water runoff and drainage in the area; however, she said a significant amount of those problems are not the making of Lexington Catholic. She spoke about the lack of a drainage system in that area, noting that the nearest catch basins are located at the foot of the hill on Barkley Drive. She said once the water leaves the school property, it does tend to pond at several intersections; but there is nothing that can be done to address that issue (according to their engineers), unless the City extends sewer lines to get to the catch basins. Ms. Wiseman indicated that they would be willing to come back for a review, but she thought the problem needed to be defined. She said if the problem is ponding water on Southgate, Sheridan and the neighboring streets, that situation will continue to occur regardless of what is done on the school property.

In response to Mr. Griggs' further inquiry, Ms. Wiseman said there is on-site detention that controls the water as it leaves the school property. She explained that they have drainage basins along Clays Mill Road in the front of the property; and in the back, the entire field (turf), which has over 10 inches of crushed stone under it, essentially acts as a detention basin. It retains the water that ultimately goes into a pipe that was installed by the church in 1993 or 1994. The water then goes into an outlet



that ultimately goes on to Southgate. The problem is that once it leaves Southgate, there is no pipe to take it. Ms. Wiseman said it is an issue with an old county neighborhood that does not have storm sewer conveyance facilities. She stated that the drainage plan for this project, with regard to handling the water they create, was reviewed by the Division of Engineering staff.

LFUCG Engineer Chuck Saylor commented that they had met with Mr. Hatfield (EA Partners) on two occasions to look at the drainage plans the applicant was planning to implement. He concurred with Ms. Wiseman that the lack of storm sewers in that area contributes to a lot of the water runoff problems that persistently occur there, noting it was not the applicant's problem to have to fix. He said they were happy with the proposal the applicant has brought forward, which will be reviewed more thoroughly as time goes on; and that what they have proposed thus far was satisfactory with Engineering.

Since there were no further questions or discussion, the Chairman entertained a motion.

Action – A motion was made by Ms. Moore, and seconded by Mr. Stumbo to approve **C-2009-84: LEXINGTON CATHOLIC HIGH SCHOOL** (a conditional use permit to expand the athletic complex facilities in a Single-Family Residential [R-1C] zone on property located at 2250 Clays Mill Road) for the reasons recommended by the staff; and subject to the four conditions recommended by the staff, including the revision of Condition #1 as stated herein.

Mr. Griggs stated that he would be in favor of some kind of inspection of the drainage solution that the applicant decides to use, after it has been completed.

Chairman Brown asked whether Ms. Moore wanted to amend the motion to include Mr. Griggs' suggestion. Ms. Moore asked Mr. Saylor if he felt this was necessary. Mr. Griggs said he would like to see some results from this drainage plan instead of neighborhoods that are still suffering because of water runoff from this property.

Mr. Saylor responded that according to the Engineering manuals, the water must be released at a rate that is equal to or less than what is currently coming off the site. He said the (applicant's) drainage study looks at ways to detain the additional water that results from adding impervious surface and makes sure that the rate the water leaves that site is equal or less, which has been demonstrated. He went on to say that proving this after the fact, however, could be very problematic; and it may be a huge burden to start requiring every developer to prove it.

Chairman Brown asked Mr. Hume whether Building Inspection would be notified if there are substantial problems. Mr. Hume responded affirmatively. He stated that if any complaints are received, they would certainly notify the Division of Engineering and the applicant, and possibly report back to the Board as well.

Mr. Griggs reiterated his concern about the persistent water (runoff) problems in the area being exacerbated by the proposed expansion of the athletic complex facilities.

At this point, the Chairman called for a vote. The votes were as follows:

Ayes: Meyer, Edwards, Moore, Stumbo, Brown

Nay: Griggs

Absent: Stout

The motion for approval carried, 5 to 1.

2. **C-2009-69: AIR-EVAC EMS, INC.** - appeals for a conditional use permit to construct and operate a helicopter refueling station in a Light Industrial (I-1) zone on property located at 501 Blue Sky Parkway. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Allowing the operation of this heliport should not adversely affect the subject or surrounding

properties. Adjacent property owners were inside their building during the helicopter landing demonstration and reported that they could barely hear the helicopter as it was landing. The wind turbulence caused by the type of helicopter to be used was minimal and will be contained on the subject property, not causing problems with any of the surrounding uses.

- b. The proposed heliport should not cause a safety problem. The Kentucky Department of Aviation, Airport Inspections Branch, was on site during the recent set-down and take-off demonstration; and the inspector noted that this heliport will require FAA approval, but did not see any safety issues to report to the FAA.
- c. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

- 1. The facility shall be constructed in accordance with the submitted application and site plan. However, modifications of up to 30 feet in a westerly direction, as approved by the FAA, are permitted; otherwise, this application will be subject to another review by the Board.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and operation of the landing pad/refueling facility.
- 3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering, prior to commencement of operations.
- 4. Air-Evac EMS will not use this location as a maintenance or storage facility for helicopters, other than for possible unanticipated emergency repairs.
- 5. This application will be subject to Federal Aviation Administration (FAA) approval of both the site plan and the operational plan prior to the issuance of any permits by the Division of Building Inspection, as well as any approvals needed from the Kentucky Department of Aviation.
- 6. The potential conflict(s) with overhead utilities and helicopter flight paths shall be reconciled with an Easement Minor Amended Subdivision Plat prior to issuance of any permits by the Division of Building Inspection.
- 7. Prior to issuance of a building permit, the applicant shall provide approval or acceptance of all of the following:
  - a) State Fire Marshall's approval of an above-ground storage tank;
  - b) State Division of Water Spill Prevention Control and Countermeasures (SPCC) plan; and
  - c) State Division of Water Groundwater Protection Plan.

Chairman Brown announced that he was disqualifying himself from (hearing) this case and requested that Mr. Stumbo take over the meeting, in the absence of the Vice Chair. Before leaving, he wished the Board, staff members and their families a happy, safe holiday season.

Representation – Mr. Mike Kelly was present representing the appellant.

Mr. Stumbo asked Mr. Marx to summarize the staff's findings regarding the site visit related to the proposed helicopter refueling station. Mr. Marx stated that a landing and take-off demonstration was arranged by the applicant for one of the adjacent property owners, which staff members and others were present to observe. The main purpose of the test was for the neighboring property owner to determine what kind of impacts there would be from the landing of the helicopter in terms of noise and possibly wind disturbance. After the on-site demonstration, the staff spoke directly to the property owner who was inside her office building to the west of the subject property and was told that the noise was barely noticeable. Wind disturbance was minimal. Mr. Marx said the staff had the opportunity to meet a representative from the KY Department of Aviation who works closely with the FAA on permitting facilities similar to the one the applicant is proposing; and that the representative had a high comfort level that this is a suitable site to establish the helicopter refueling station. However, it was noted that the applicant will still have to go through the process of getting permits from the FAA, as well as the approval or acceptance of other State agencies (i.e., State Fire Marshall; State Division of Water - Spill Prevention Control and Countermeasures; and State Division of Water - Groundwater Protection). Mr. Marx said the staff was recommending approval of the conditional use request.

In response to Mr. Stumbo, Mr. Kelly indicated that he was in agreement with the staff's

recommendation for approval, as well as the conditions. He explained to the Board that they had already started the process by filing a 7480-1; and that Mr. Steve Marcozzi had visited the proposed site and subsequently would send his recommendation to the ADO (Airport District Office) in Memphis, which will do an air space study including the issue with the existing air ambulance facility located 240 feet to the northwest of the proposed site. He said Mr. Marcozzi saw no issue with that issue at the time, which he made the commission aware of via a report. Mr. Kelly said, with regard to this industry, that they have seen a rise in helicopter accidents within the past few years; and they recognize that safety is paramount. He noted that the ultimate decision, as far as the proximity of the proposed helicopter refueling station to the one just north of the subject property, will be made by the FAA.

Opposition – Mr. Kelly Shaw (with PHI) and Mr. Kevin Mims were present and sworn in before speaking.

Mr. Mims stated that his major concern was about safety in relation to the volume of flights that will be coming in daily; the size (blade span) of the helicopters; and the proximity of the proposed helicopter refueling station to the existing helicopter landing facility on the adjacent property. He stated that during a brief discussion earlier with Mr. Kelly, they were informed of a change in the proposed flight plan and the need to monitor each other's radio communication during incoming/outgoing flights, which he felt would add confusion and increase the potential for an accident to occur. It was also noted that Mr. Marcozzi had not been in contact with them.

In response to Mr. Griggs' inquiry, Mr. Mims said he is the property owner where PHI currently operates, and that he has over 20 years experience in repairing and operating helicopters (as a licensed pilot).

Ms. Meyer asked about the number of take-offs and landings that occur daily at the existing site. Mr. Shaw responded that, in the air medical business, the volume or number of flights varies on a daily basis at the facility, which is open 24/7. As an example, he said there may be several flights landing one day, in various weather and wind conditions, and perhaps none for the next day or two. He noted that the helicopters may come in from different directions, in uncontrolled air space, which he felt posed a significant safety concern. Mr. Shaw was deeply concerned about the proximity of the proposed facility to the existing helicopter landing pad, which is only 200 feet away. Ms. Meyer read a pertinent section of the staff's case report regarding the established boundaries around the airport where radio communication with the airport is required (10-mile radius), and where it is advised (20-mile radius). She said it seemed to her that there was communication going on. Mr. Mims commented on the reason for PHI's selection of their site location, as it relates to the necessity of communicating with air traffic control at the airport.

Ms. Moore asked whether the FAA was aware of the two helicopter landing facilities; and if they study the safety aspect. Mr. Marx responded yes, from what the representative with the KY Department of Aviation told the staff, which he felt was an important point; and that the issue before the Board was mainly a disturbance issue, with respect to the legal parameters, and making sure there will not be a disturbance to the neighboring property. He said the safety issue is paramount with the FAA when they do their permitting; and none of us are experts in that, which is why we rely on other agencies to put conditions and the Board's approval to make sure that they get those permits.

Mr. Kelly responded. For clarification, he stated that when the helicopter was scheduled to fly in, there had not been any opposition from PHI, and they were not notified. He said the demonstration was arranged for an adjacent property owner who was concerned about the wind turbulence and noise impact. Regarding the comment that Mr. Marcozzi did not contact PHI, he said it was a coincidence that Mr. Marcozzi's site inspection occurred on the same day that the demonstration was scheduled. He said they were not trying to keep any information from PHI or slight them in any way. Mr. Kelly went on to say that when the 7480-1 is submitted, the prevailing wind is used as part of the primary approach and departure, which the FAA has the latitude to change in any way they feel best suits the safety of that operation. He said, based on the wind direction, for the most part, they will be flying in the opposite direction from PHI. He emphasized that safety was a primary concern. Mr. Kelly said he was unable to answer the question as to why this particular site location was chosen, but he assumed it was based on where their flight

volume comes from.

Mr. Stumbo commented that, in looking at the staff's recommendations, this was obviously the first step in a long process; and that the FAA would certainly be very much involved in the permitting of this air evac operation. Since there were no further questions or discussion, Mr. Stumbo asked for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Brown recused) to approve **C-2009-69: AIR-EVAC EMS, INC.** (a conditional use permit to construct and operate a helicopter refueling station in a Light Industrial [I-1] zone on property located at 501 Blue Sky Parkway) as recommended by staff and subject to the seven conditions.

#### E. Administrative Review

1. **A-2009-85: LARRY MORTON** - appeals for an administrative review of the Division of Building Inspection's refusal to allow a child care center that is not accessory to a church, school or private club, in a Two-Family Residential (R-2) zone, on property located at 744 Florence Avenue. (Council District 2)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. Compelling information of any kind has not been provided by the appellant to support that the decision of the Division of Building Inspection was made in error.
- b. The language in the Zoning Ordinance requiring that child care centers in an R-2 zone be accessory to a church, school or private club is clear, and not subject to varying interpretations.
- c. There are no principal uses, accessory uses or conditional uses identified in the Zoning Ordinance for the R-2 zone that are substantially similar to the proposed use. As such, a child care center that is not accessory to a church, school or private club is appropriately considered as prohibited in the R-2 zone.

Representation – Mr. Larry Morton, appellant, was present. In response to the Chairman's inquiry as to whether Mr. Morton was able to address the objector's concern, he explained that the neighbor wanted to have a fence constructed between the two properties if the proposed child care center was approved by the Board, which he agreed to do.

Chairman Brown stated that since this case was recommended for disapproval, the staff typically makes its presentation first.

Presentation – A frontal view of the subject property located on Florence Avenue, where a two-story duplex was constructed in 1988, was shown. Mr. Marx stated that the appellant was requesting an administrative review of the Division of Building Inspection's decision not to allow a child care center on the property, which is zoned R-2 (Two-Family Residential). He said that the appellant was interested in changing the residential use of the property to a child care center. Mr. Marx explained that the Zoning Ordinance allows child care centers in an R-2 zone only if they are accessory to a church, school or private club; and that the appellant was asking for something that the Zoning Ordinance clearly does not allow. He said it was stated in the appellant's application that converting the use would be an upgrade for the neighborhood, particularly since the structure has a history of drug trafficking. However, the staff was unable to support the appellant's request. Article 8-11(d) of the Zoning Ordinance was displayed on the overhead.

Mr. Morton stated that he understood the staff's position regarding the request to operate a child care facility on the property. He spoke about enduring an economic hardship, as a builder and property owner in the neighborhood, due to being unable to keep both units of the duplex occupied for any reasonable length of time, and criminal activity in the area. He told the Board that he thought the proposed use was needed and would be beneficial to the neighborhood, particularly the children of families living there.

Chairman Brown reiterated to Mr. Morton that the Board did not have the authority to grant his request since the proposed child care use is not accessory to a church, school or private club. There was a

brief discussion between the Chairman and staff regarding other types of business uses that would be allowed in an R-2 zone, such as a home occupation (conditional use) or home office (accessory use). Mr. Morton noted having a letter from a church pastor who expressed interest in the building as accessory to the church, including the child care center.

Chairman Brown asked staff whether the church would have to be located on the property. Mr. Marx said that would certainly make this a lot simpler, noting there have been a few previous BOA cases where that specific issue (proximity) did come up. He recalled one instance involving a church where a request was made for an accessory use on a separate (adjoining) lot that was refused by Building Inspection. However, the Board overturned Building Inspection's decision after hearing the case and granted the requested conditional use. Mr. Marx went on to say that he thought the church the appellant was referring to was several lots away and not adjacent to the subject property. Mr. Morton clarified that the church would actually occupy the property at 744 Florence Avenue. Mr. Marx said that would be a conditional use request for a church. A brief discussion followed regarding the operation of a child care facility in conjunction with the church.

Prior to the motion, Mr. Stumbo commended the appellant for what he was trying to accomplish, as far as upgrading the property and improving the neighborhood; and that the Board empathized with him regarding the economic challenges he was facing. However, he reiterated that the Board didn't have the authority to approve the appellant's request.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously (Stout absent) to deny **A-2009-85: LARRY MORTON** (an administrative review of the Division of Building Inspection's refusal to allow a child care center that is not accessory to a church, school or private club in a Two-Family Residential [R-2] zone on property located at 744 Florence Avenue) for the reasons provided by staff, and to uphold the decision of the Division of Building Inspection.

(Following disposition of the aforementioned case, the Board proceeded to hear C-2009-84: LEXINGTON CATHOLIC HIGH SCHOOL.)

IV. **BOARD ITEMS** – Mr. Stumbo announced that any items a Board member wished to present would be heard at this time.

- A. Resignation of Board Member - Ms. Carolyn Edwards submitted a letter of resignation to the Board (effective after the meeting), which was read for the record. She said, regretfully, that it was necessary to resign as a BOA member in order to accept an appointment to the board of the Kentucky Housing Corporation (which was determined a conflict of interest). Mr. Stumbo said the announcement from Ms. Edwards had come as a surprise. He thanked Ms. Edwards for her time, effort and years of service to the Board and the Lexington community as well. She was congratulated and wished the very best in her endeavor. Mr. Stumbo said Ms. Edwards would be missed.

Ms. Moore wished the Board and staff members a Merry Christmas and a Happy New Year.

V. **STAFF ITEMS** – Mr. Stumbo announced that any items a staff member wished to present would be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Sallee reminded the Board of an APA audio conference on Wednesday, January 20, 2010, at 4:00 p.m. in the Division of Planning conference room (7<sup>th</sup> floor of the Phoenix Building). The title of the conference is "Performance Measurement in Transportation Planning".

Mr. Sallee said, of Ms. Edwards, that she would be missed, and that the staff and community appreciated her service. He thanked Ms. Edwards for all she had done for her time on the Board. He also wished the Board members and their families a Merry Christmas and Happy New Year.

VI. **NEXT MEETING DATE** – It was announced that the next meeting date would be January 29, 2010.

VII. **ADJOURNMENT** – Since there was no further business, the meeting was adjourned at 2:25 p.m.

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Peter Brown, Chairman

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James Griggs, Secretary